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PATRICIA CROWELL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WINE SCOUT INTERNATIONAL,

Plaintiff,

vs.

PATRICIA CROWELL,

Defendant.

CASE NO. C 07 05930 JSW

REPLY TO OPPOSITION TO
DEFENDANT'S MOTION TO
ENLARGE TIME FOR THE
FOR THE FILING OF RESPONSIVE
PLEADINGS

Date: Shortened Time
Time: Set By the Court
Courtroom: 2, 17th Floor
Judge: Hon. Jeffrey S. White

[Electronic digital signatures permitted]

In its Opposition, plaintiff attempts to obfuscate with a purported sixty-eight page chronology a central issue to the Motion before the Court – after the “quiet period” for the noticed publication by the PTO of defendant’s application to register the trademark, The Wine Scout, that will end in just after mid-March 2008, the Trademark Attorney has indicated that she will likely approve the deletion of International Class No. 35 from defendant’s trademark application. That action would irrefutably moot a number of the claims in the Complaint and ameliorate the concerns of plaintiff, but action thereon by the PTO cannot occur until after the close of the publication period of plaintiff’s trademark application which will be approximately

1 the end of March, 2008.¹

2 In its Opposition, plaintiff would have the Court believe that it, having filed an
3 Opposition with the PTO to defendant's published trademark and then filed to have that
4 Opposition stayed by its own motion pending the outcome of this litigation, the Trademark
5 Attorney can take no further action following the publication period.

6 That statement by way of obfuscation is quite simply not in concert with either the
7 statements of the Trademark Attorney or the Trademark Manual of Examination Procedures
8 (hereinafter referred to as "TMEP"). Specifically, TMEP 1505.01(a) provides:

9 If an applicant proposes to amend the identification of goods or services
10 after publication by restricting or deleting items in the existing
11 identification, and the amendment is otherwise proper, the Office will
approve the amendment, and the mark will not be republished.

12 If International Class No. 35 is deleted from defendant's approved and published
13 trademark thereby mooting a number of the claims in the Complaint and ameliorating the
14 concerns of plaintiff, then it is as likely as not that defendant's responsive pleadings may well be
15 a Rule 12 Motion and not an Answer and/or Counterclaim. If defendant is precluded from
16 awaiting this outcome by the PTO, which she is assured will occur prior to the end of March,
17 2008, then there will be unquestioned substantial harm or prejudice to her and none to the
18 plaintiff in light of a first Case Management Conference that will not occur until April 25, 2008.

19 That is the very real issue before the Court in the Motion, one that plaintiff cannot
20 obfuscate, and thus plaintiff remains devoid of any showing to the Court of substantial harm or
21 prejudice to it whatsoever if the Motion is granted.

22 Respectfully submitted,

23 DATED: February 27, 2007

BUSINESS & TECHNOLOGY LAW GROUP

24 By: /s/ Stephen N. Hollman
25 Stephen N. Hollman,
26 Attorneys for Defendant,
PATRICIA CROWELL

27 ¹ Crowell Decl., p. 3, ll. 7-10 and ll. 16-22; Hollman Decl. p. 2, ll. 7-8; Complaint (ECF Document No. 1,
28 e.g., ¶¶ 7, 9, 15.